

Rafaëlle Maison, *Coupable de résistance ? Naser Orić, défenseur de Srebrenica, devant la justice internationale*, Paris, Armand Colin, 2010, 225 p.

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Rafaëlle Maison's book follows the trial of Brigadier Naser Orić who had once been the bodyguard of Slobodan Milošević and who then became the commander of Bosnian forces at Srebrenica from June 1992 until he had been called by the Bosnian authorities to Tuzla in the spring of 1995.

In March 2003, Orić was indicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY) for violations of the laws or customs of war: on two charges of having ordered guerrilla raids into the surrounding Bosnian Serb villages (between June 1992 and January 1993), and of failing to prevent the torture, mistreatment or killing of those Bosnian Serb men detained in the Srebrenica police station (between September 1992 and March 1993). In late June 2006, the ICTY sentenced Orić to two years in prison for having failed to prevent the inhumane treatment of Bosnian Serb prisoners. However, in July 2008, Orić was acquitted of all charges on appeal, and returned to his home in Tuzla.

An invaluable initiative...

Maison's book engages in the critical and meticulous analysis of the trial minutes. Having worked at the ICTY as legal assistant between 1995 and 1996 and now a Law professor specialised in International Criminal Law at the University of Paris XI, Maison is indeed very well placed to assess the Orić trial from a legal perspective.

Furthermore, with her book, Maison accomplishes an invaluable service by informing the general public about one of the most tragic episodes of the Bosnian war through the prism of a controversial trial. Indeed, some have believed that the real reason for bringing Orić to trial was to counter the Serb complaints about the ICTY's allegedly biased stance against them.

Highly praiseworthy though it is, Maison's book is unfortunately compromised, first by the use of an over-emotional language to narrate and criticise the legal proceedings, and secondly, by the lack of historical data.

... compromised by unprofessional language

The emotionality even the aggressiveness of the language is perhaps the most striking feature of Maison's book.

Maison not only harshly criticises the prosecution team, but she also attempts to ridicule its proceedings with somewhat trivial anecdotes. At one point, she even qualifies one of Jan Wubben's arguments, the lead counsel for the prosecution, as "indecent" (p. 212, fn. 107). Wubben's co-counsels are "blind" (p. 39); their arguments are "exasperating" (p. 38). Maison doubts Wubben's professionalism since he is Dutch (p. 38). The role played by Dutchbat (the Dutch batallion at Srebrenica) and the then Dutch government in the fall of Srebrenica back in July 1995 has been much criticised.

Even if one accepted that the nationality of a lawyer may compromise their judgment, then one cannot help asking why Maison does not reason alike when she unveils the nationality of the two co-counsels for the prosecution, Joanne Richardson and Patricia Sellers, both of whom are American. Despite the fact that the then Clinton administration interpreted the Bosnian war as an inter-state conflict and led essentially a pro-Bosnian policy, Maison does not conclude, for obvious reasons, that the two co-counsels may have had pro-Bosnian biases. For an author who rightly criticises the ethnicised language used during the ICTY proceedings (p. 23, 41, 49, 50), her own criticisms based on legal actors' nationality seem at least contradictory.

On a humourous note, one might wonder why the author's vehemence relatively drops in intensity over the question of General Philippe Morillon, the controversial French commander of UNPROFOR in Bosnia-Herzegovina (September 1992-July 1993). Is it because she is French, one might wonder.

... and the lack of historical data

Maison's book has only three pages setting the events which led to the Yugoslav wars into historical perspective (pp. 11-14). Some further clues can also be found scattered throughout the book. For some reasons, Maison believes that the reality about the Bosnian war is "now rather well-known" (p. 65).

It is not - in any case not by everyone. It suffices to look at the blogs, the biased books published by otherwise respected academics and journalists (e.g. Gérard Baudson, Maurice Pergnier, Peter Brock), or awkward terminology used by well-intentioned outsiders to have an idea of the great confusion that may haunt the average reader's mind. Indeed, at one point, Maison herself admits that those who watch the ICTY trials live via Internet may either not be familiar with the history of the region or not share the same perception of the events (p. 17). She should have thought the same for her own readers.

In Maison's book, historical details are mostly related by witnesses, e.g. James Gow, the British historian and expert witness, or Colonel Pyers Tucker, the British military assistant to General Morillon. While Gow's testimony comes almost in the middle of the book (p. 94-97), Colonel Tucker's reference to "Bosnian Serbs' propaganda machinery" (p. 136) remains opaque since no example of manipulation is given in the book. Without historical contextualisation, however, the unspecialised reader may consider the explanation given by Slavoljub Filipović, a Bosnian Serb witness for the

prosecution, of the Bosnian war as perfectly plausible whereas it is nothing but the umpteenth repetition of Milošević's war propaganda:

"[We, Bosnian Serbs,] never accepted Bosnia-Herzegovina. We still do not accept it. The Serbs still do not accept Bosnia-Herzegovina. The Serbs did not create *Republika Srpska*. It was born naturally. We took an oath; we wanted to maintain the Yugoslav unity" (p. 70).

A close collaboration with a historian specialised in ex-Yugoslavia would have substantiated Maison's arguments and guided her readers more effectively.

Muslim - Bosniak - Bosnian

Maison has difficulty with the epithets "(Bosnian) Muslim", "Bosniak" and "Bosnian". Using the ethnonym "Bosniak" (Bosnian Muslim), instead of "Bosnian" (inhabitant of Bosnia-Herzegovina, no matter what the ethnic origin), while referring to state institutions and authorities, e.g. "Bosniak army" (*passim*), "Bosniak state" (p. 95) or "Bosniak President" (p. 128, 169, 172), means rather to support Serb propaganda - that this was a civil conflict opposing three neatly divided ethnic communities. Something that Maison would not want to imply in the least. It is also to deny the existence of the "other Serbs"¹.

Using the ethnonym "Bosniak" for the period between June 1992 and March 1993 is an anachronism since the etiquette "Bosniak" - though a historical name dating back to the 12th century - was first adopted by the first Bosnian Convention on 27th September 1993 as the national name of Bosnian Muslims. Maison explains that she wanted to avoid using systematically the term "Muslim" which does not necessarily reflect the conviction of the persons involved and which was a word used by their enemies to deny their national identity (p. 201, fn. 1). That is why Tito distinguished, much awkward though it was, **Musliman** (in the ethnic sense) from **musliman** (in the religious sense). It is great pity that Maison wrote her book in French which, unlike English, can mark this crucial semantic nuance (*Musulman; musulman*).

Following in the footsteps of Ernest Renan, Maison probably considered that religion is neither a sufficient nor a legitimate factor in the construction of a modern European nation, and that "Bosniak" sounds as more secular an ethnonym than "Muslim". However, as astutely put by the famous Irish political scientist Benedict Anderson, "communities are to be distinguished, not by their falsity/genuineness, but by the style in which they are imagined"².

¹ The dissidents of the Milošević/Karadžić regime, the draft dodgers, those Bosnian Serbs committed to multi-ethnic Bosnia-Herzegovina and loyal to the democratically elected Bosnian government (including some 30,000 Bosnian Serbs in Tuzla and another 50,000 in Sarajevo who bravely stayed in these two besieged cities until the end of the war, suffered starvation and were killed under their "kinsmen's" bullets and mortars, just like their Muslim and Croat neighbours), and all those "Yugoslavs" born to ethnically mixed couples.

² Benedict R. O. Anderson. *Imagined Communities. Reflections on the Origin and Spread of Nationalism*. London: Verso, 2006, p. 6.

A trial which ought never to have taken place?

That the Orić trial ought never to have taken place is the underlying message of Maison's book. In her own words, her book is there to show "why, all in all, one should be wary of the law" (p. 14). Her argument runs that Orić, who defended his people when threatened by genocide, should never have stood trial.

Orić is a heroic figure and he merits indeed all our eulogies. There must be no doubt whatsoever about that. However, as underlined by Maison herself, the indictment covered crimes allegedly committed between June 1992 and March 1993 (p. 16). The genocide which occurred in July 1995 was still far away. If Orić had ever committed the crimes that he stood accused of, he could not have known at the time of his deed that genocide would occur at Srebrenica. In this regard, it is surprising to find Maison, later in the book, speculating why the witnesses were ordered to avoid mentioning the genocide (p. 154-155). Surely it was common sense.

Maison depicts well the human misery at the besieged Srebrenica, the desperate conditions in which Orić and his men had to fight against the Serb besiegers and feed the population who went to hide in the forest:

"Suad Smaljović, a young police officer, invites the inhabitants of his village, Kazani, not to turn over their weapons and to withdraw into the forest [after the Bosnian Serb ultimatum on 17th April 1992 which urged the defenders to turn over their weapons]. He is followed by hundreds of people, women, children and the elderly, who stay in the forest for two weeks "in the open, with nothing", often under rain. They can only observe, from the forest, the sacking of the city" (p. 98).

While reading these passages, one cannot help remembering the Bielski Partisans who, after the German occupation of Poland, spent more than two years living in the forests and rescued more than one thousand Jews from the Holocaust. After the war, some of their members have been accused of war crimes on the neighbouring population. The Polish Institute of National Remembrance is still investigating these allegations.

In a sense, Orić had more chance than the Bielski Partisans. He had a trial, and he was acquitted of all charges. Orić's name has been linked by Serb nationalists to atrocities committed by Muslims against Serb civilians which allegedly provoked Bosnian Serb forces to invade Srebrenica and to decimate the local male population. Indeed, this argument has been readily embraced by General Morillon and defended during the trial (p. 197). In this regard, the trial did great service to Orić by clearing his name once and for all.

Maison, somewhat disapprovingly, notes that "[...] proceedings have been launched against the members of the Kosovo Liberation Army who fought Serb oppression, and against Bosniak soldiers. The majority of these proceedings ended with failure for the prosecution. Acquittals have been numerous, or only minor punishments have been pronounced" (p. 27). However, is justice not one of best ways which help



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demystifying persistent atrocity myths and which would eventually lead to reconciliation?

Despite these dissonances, Maison's book is still an essential read for general readers and scholars alike, for it has the utmost merit of correcting many persistent misperceptions about Srebrenica and the Bosnian war in general, some of them still being spread by the media and the Internet. A careful revision of the book - preferably by a historian - would no doubt resolve these dissonances to a harmonious consonance.